

1 E. Vincent Wood (Bar No. 297132)
2 Law Offices of E. Vincent Wood
3 1501 N. Broadway, Suite 261
4 Walnut Creek, CA 94596
5 Tel. (925) 278-6680
6 Fax. (925) 955-1655
7 calendar@woodbk.com
8 Attorney for Debtor

9 UNITED STATES BANKRUPTCY COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN JOSE DIVISION

12 In re
13 Sherry Virginia Seitzinger

14 Debtor in possession.

) Chapter 11 Case No. 20-51623-SLJ

) NOTICE AND OPPORTUNITY FOR
) HEARING ON DEBTOR-IN-
) POSSESSION'S MOTION FOR AN ORDER:

- 15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)
- 1) **AUTHORIZING SALE OF THE
PROPERTY LOCATED AT 2722
BAYVIEW DRIVE, FREMONT,
CALIFORNIA;**
 - 2) **ORDERING THAT THE SALE BE
FREE AND CLEAR OF ANY
CLAIMS AND INTERESTS;**
 - 3) **AUTHORIZING THE PAYMENT
OF BROKERS COMMISSION,
TAXES AND CLOSING COSTS [11
U.S.C. § 363(b), (f)]**

) [No hearing required unless requested]

24
25 TO THE HONORABLE JUDGE STEPHEN L. JOHNSON, THE UNITED STATES
26 DEBTOR'S OFFICE FOR THE NORTHERN DISTRICT OF CALIFORNIA, ALL
27 CREDITORS/PARTIES IN INTEREST, AND THEIR REPSECTIVE COUNSEL(S) OF
28 RECORD:

1
2
3 **NOTICE AND OPPORTUNITY FOR HEARING ON DEBTOR-IN-POSSESSION'S**
4 **MOTION FOR AN ORDER:**

- 5
6 1) **AUTHORIZING SALE OF THE PROPERTY LOCATED AT 2722**
7 **BAYVIEW DRIVE, FREMONT, CALIFORNIA;**
8 2) **ORDERING THAT THE SALE BE FREE AND CLEAR OF ANY**
9 **CLAIMS AND INTERESTS;**
10 3) **AUTHORIZING THE PAYMENT OF BROKERS COMMISSION,**
11 **TAXES AND CLOSING COSTS [11 U.S.C. § 363(b), (f)]**

12 **PLEASE TAKE NOTICE** that Sherry Virginia Seitzinger, Debtor-In-Possession
13 (“Debtor”), intends to sell the estate’s right, title, and interest in the real property located at
14 2722 Bayview Drive, Fremont, CA 94536 (the “Property”) to David Park (the “Buyer”) for
15 the total purchase price of \$1,275,000 (the “Purchase Price”), free and clear liens and
16 interests, and subject to overbid and court approval. Debtor’s motion to sell the Property
17 (“Motion”) also seeks authority to pay a commission of 2.5% of the Purchase Price to the
18 Buyer’s broker, taxes incurred by the estate, costs of sale, and certain reimbursements and
19 costs related to the sale. The sale is subject to Bankruptcy Court approval and overbid, as
20 described below.

21 The Property is a residential property and the Debtor is a 100% owner. The Debtor
22 actively marketed the Property, including advertising and showing the Property to
23 prospective buyers. The Broker listed the Property at \$1,350,000. The Debtor received
24 interest from several potential buyers and selected an offer from a highly motivated buyer
25 with a favorable combination of terms. Debtor believes that the proposed sale is in the best
26 interest of the Bankruptcy Estate.

27 **Broker Commission and Costs of Sale.** The Debtor proposes to compensate the
28 Buyer’s broker with a commission of 2.5% of the purchase price. The Debtor also requests

1 authority to pay the associated costs of sale, including but not limited to, pro-rated real
2 property taxes, city and county transfer taxes.

3
4 **Additional Provisions.** The Debtor will request that the Court's order allow the
5 Debtor to make minor modifications to the purchase agreement including how title is to be
6 vested to the Buyer as the Buyer may instruct. The Debtor will also request that the Court's
7 order provide that in the event the Buyer does not close the sale transaction, the Debtor will
8 be authorized to sell the Property on the same terms and at the same or greater price to an
9 alternate purchaser without a further order of the Court, unless the alternate purchaser is an
10 insider, then the Debtor would only be authorized to sell the Property to the alternate
11 purchaser after further order of the Court after providing 24 hours' notice to the Debtor's
12 counsel, Office of the U.S. Trustee and the Petitioner/co-owner by an Ex Parte Application.
13 The Debtor will also retain the right to negotiate minor changes to the sale agreement,
14 without further Court order.

15
16 **THE SALE OF THE PROPERTY IS ON AN "AS IS" "WHERE IS" AND**
17 **"WITH ALL FAULTS" BASIS. THE DEBTOR EXPRESSLY DISCLAIMS ANY AND**
18 **ALL WARRANTIES.** The sale of the Property is subject to Court approval. The Debtor
19 will request that the order approving the proposed sale state: "This Order is effective upon
20 entry, and the stay otherwise imposed by Rule 62(a) of the Federal Rules of Civil Procedure
21 and/or Bankruptcy Rule 6004(h) shall not apply." The Debtor also requests that this Court
22 retain jurisdiction to resolve any controversy or claim arising out of the sale of the Property.

23
24 **Overbid Procedure.** The sale of the Property is subject to overbid by a qualified
25 overbidder ("Qualified Overbidder"). In order to be designated as a Qualified Overbidder,
26 persons must notify E. Vincent Wood, Debtor's Attorney, at 1501 N. Broadway, Suite 261,
27 Walnut Creek, California 94596, phone (925) 278-6680, email: vince@woodbk.com, by
28 **April 30, 2021** and comply with the following Overbid Procedures:

1 The first overbid must be in an amount of at least \$1,300,000 (i.e. \$25,000 over
2 current Purchase Price);

- 3 1. The first overbid must be in an amount of at least \$1,300,000 (i.e. \$25,000
4 over current Purchase Price);
- 5 2. Further bids will be in increments of \$25,000;
- 6 3. A bid must be an “all cash” offer and must not contain loan contingencies,
7 inspections contingencies or other contingencies. All of the other terms and
8 contingencies of sale, other than the price term, except as otherwise negotiated
9 in advance with the Debtor shall apply;
- 10 4. Each Qualified Overbidder must provide a deposit of 3% of the initial overbid
11 to the Debtor by cashier’s check, certified check or other funds satisfactory to
12 the Debtor, along with adequate financial documentation reflecting an ability
13 to close, by **April 30, 2021 at 5:00 p.m.** Such financial documentation must
14 be in the form of an unconditional loan commitment, in a form acceptable to
15 the Debtor, or financial data showing liquid assets sufficient to close the
16 purchase.
- 17 5. If the successful Qualified Overbidder fails to consummate the purchase, the
18 deposit will NOT be refunded to the successful Qualified Overbidder, but will
19 be retained by the Debtor as liquidated damages. Deposits will be returned to
20 the unsuccessful Qualified Overbidders other than a backup offer, upon the
21 conclusion of the auction;
- 22 6. In the event the Debtor qualifies an Overbidder, the overbid auction will take
23 place on **May 3, 2021 at 1:00 p.m.** by telephone;
- 24 7. The Qualified Overbidder will be required to close escrow within 7 days of
25 Court approval;
- 26 8. The sale is expressly subject to approval of the United States Bankruptcy
27 Court for the Northern District of California;

1 9. The sale will be on an as-is, where-is and with all faults basis. The Debtor
2 disclaims any representations or warranties, express or implied, in connection
3 with the sale. Any disputes with respect to the sale will be resolved by the
4 United States Bankruptcy Court in its sole and complete discretion;

5 10. The Debtor may accept a backup offer at the auction;

6 11. The Debtor reserves the right, in her sole discretion, to refuse bids which do
7 not, in her sole opinion, conform with the terms of the sale, to modify these
8 terms and conditions or to continue the sale from time to time. The Debtor, in
9 her sole discretion, will determine the highest and best bid.

10 12. In the event that buyer is not the successful bidder, and a Qualified
11 Overbidder purchases the Property, and actually closes escrow, buyer shall
12 receive a "break-up fee" of \$2,500 at the time of the closing of the sale.

13 13. In the event that buyer is not the successful bidder, the buyer's deposit shall
14 be refunded in full, unless the buyer agrees, at the auction, to be back-up
15 bidder for the Property, at an amount equal to their last bid regarding the
16 Property, in the event that the successful Qualified Overbidder does not close
17 escrow. In that event, if the successful Qualified Overbidder closes escrow on
18 the Property, buyer shall receive their deposit, and their break-up fee, upon the
19 close of escrow.

20 14. In order for the Qualified Overbidder sale to move forward, the Qualified
21 Overbidder, upon being determined to be the successful bidder by the
22 Bankruptcy Court, must execute a Purchase Agreement and addendum
23 thereto.

24
25 **PLEASE TAKE NOTICE THAT** any objection to the requested relief, or a request
26 for hearing on the matter, must be filed and served upon the initiating party within 21 days of
27 mailing the notice;
28

1 Any objection or request for a hearing must be accompanied by any declarations or
2 memoranda of law any requesting party wishes to present in support of its position;

3 If there is no timely objection to the requested relief or a request for hearing, the court
4 may enter an order granting the relief by default.

5 In the event of a timely objection or request for hearing, the initiating party will give
6 at least seven days' written notice of the hearing to the objecting or requesting party, and to
7 any Debtor or committee appointed in the case.

8 Any objections or requests for hearing should be filed with the Bankruptcy Clerk and
9 sent to counsel for the Debtor at the address shown below. Due to the Covid 19 outbreak, the
10 following are the procedures for filing a document with the Court:

11 The court will continue accepting filings through ECF. For filings by pro se parties
12 (individuals without an attorney) or individuals not registered for ECF, the court will accept
13 documents for filing by email, mail, or court drop-box.

14
15 **Filing by Email:** Pleadings to be filed by email should be sent to CANB-
16 EMERGENCYFILINGS@canb.uscourts.gov. Any document to be filed by email should be
17 in PDF format and include the case name, case number, title of pleading, statement of relief
18 requested, and signed.

19
20
21 **Registered ECF filers should not submit filings by email.**

22
23 **Filing by Mail:** Pleadings and filing fee payments may be sent by U.S. Mail to:
24 United States Bankruptcy Court, 450 Golden Gate Avenue, Mail Box 36099, San Francisco,
25 CA 94102. Any document to be filed by mail should include the case name, case number,
26 title of pleading, statement of relief requested and be signed.

1 **Filing by Drop-Box:** Pleadings and filing fee payments may be deposited into a
2 drop-box available in two locations: 1) at the San Francisco Courthouse, 450 Golden Gate
3 Avenue, San Francisco. Access to the building is available through the Turk St. entrance
4 from 6 a.m. to 6 p.m. Monday - Friday (excluding federal holidays). Individuals need valid
5 government-issued identification to enter the building. A date stamp machine is provided
6 with the drop-box. Documents will be retrieved and processed twice a week; 2) at the San
7 Jose Federal Courthouse, which is located at 280 South First Street, San Jose, CA. Access
8 to the building and the drop-box is between 7:30 a.m. to 5 p.m. Monday - Friday (excluding
9 federal holidays). Individuals must present valid government issued identification to enter
10 the building. A date stamp machine is provided next to the drop-box, and documents will be
11 retrieved and processed twice a week.

12
13 For further information regarding the foregoing, please contact counsel for the Debtor
14 at the address shown above on Page 1.

15 Date: April 19, 2021

16 /s/ E. Vincent Wood
17 E. Vincent Wood
18 Attorney for Debtor in Possession
19
20
21
22
23
24
25
26
27
28